

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 606 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

-----  
KRISHNABEN ASHOKBHAI VADHER

Versus

STATE OF GUJARAT

-----  
Appearance:

MR KB ANANDJIWALA for Petitioner  
PUBLIC PROSECUTOR for Respondent No. 1  
MR BS PATEL for Respondent No. 2

-----  
CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 12/08/1999

ORAL JUDGEMENT

Rule. Mr.SP Dave, learned APP for respondent No.1 and Mr.B.S. Patel, learned advocate for the respondent No.2 waive service of rule.

.RS 2

#. By virtue of this petition under Section 482 of the CrPC, the petitioner herein challenges the order passed

by the learned Sessions Judge, Vadodara in Criminal Revision No : 122/99 dated 3-7-1999. The said revision application arose out of order passed by the learned CJM, Vadodara in Criminal Misc. Application No : 271/99 dated 30th June, 1999.

#. The brief facts are that one Chetanbhai Kishanrao More preferred application under Section 97 of CrPC, whereunder the present petitioner was sought to be brought before the Court on the ground that the petitioner is his legally wedded wife. The petitioner was brought before the Court, she stated that she is major and she is not illegally detained by her parents. She is married to one Ashok Vadher and would like to go her husband Ashok Vadher. The learned CJM considering the facts of the case directed that the petitioner to be sent to Nari Sanrakshan Gruh for 48 hours. This order was challenged before the learned Sessions Judge at Vadodara by way of revision application and the learned Sessions Judge observed that in view of the fact that the lady was major and wanted to go to Ashok Vadher. The learned Additional Sessions Judge had also refused to interfere with the order on the ground that its an interlocutory order and revision is not maintained. Therefore, being aggrieved, the petitioner is before this Court by way of present petition for seeking following reliefs;

- (A) Be pleased to quash and set aside the order passed by the learned Sessions Judge, Vadodara, in Criminal Revision Application No : 122/99.
- (B) Be pleased to quash and set aside the order passed by the learned Judicial Magistrate, Vadodara, in Criminal Misc. Application No. 271/99.
- (C) Be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction and thereby direct the learned Chief Judicial Magistrate, Vadodara, to pass an appropriate order and thereby allow the petitioner to go with her husband Shri Ashokbhai Shahshikant Vadher at Mahuva.
- (D) Pending admission / hearing and final disposal of this petition, be pleased to stay the implementation, execution and operation of the order passed by the learned Chief Judicial Magistrate, Vadodara, in Criminal Misc.

Application No : 271/99 as well as the order passed by the learned Sessions Judge, Vadodara, in Criminal Revision Application No : 271/99.

(E) Be pleased to pass any other and further reliefs as the Hon'ble Court deems fit and proper, in the interest of justice.

#. Notice was issued and Mr.B.S.Patel, learned advocate appears for respondent No.2. Mr.Patel states that the order passed by the learned CJM considering the circumstances existing then. However, he does not join the issue on question of legality of that order.

#. In view of this fact, the lady could not have been sent to Nari Sanrakshan Gruh by learned CJM when she says that she is major and she wants to join with Ashok Vadher.

#. Here, there are two disputed facts emerging from the cases of rival sides. On one hand, respondent No.2 Chetanbhai Kishanrao More claims to be husband of the petitioner. The petitioner on the other hand shows that she is married to Ashok Vadher and is staying with him and wants to stay with him. This Court at this stage expresses no opinion on these claims but the fact remains that if the petitioner, who is major undisputedly, wants to stay with Ashok Vadher, then, she cannot be forced to go either to Nari Sarankshan Gruh or to any other place and therefore, the order passed by the learned CJM and confirmed by the learned Additional Sessions Judge stands quashed and set aside. The petition stands allowed to that extent. Rule is made absolute to the aforesaid extent.

Date : 12-8-1999 [ A.L.Dave,J. ]

#kailash#